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90-1217

FILED
JAN 28 1991
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1990

Shirley M. Kearing,
Petitioner,

v.

The Honorable S. Martin Teel, Jr., et al,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
For the District of Columbia

APPENDIX D
BANKRUPTCY COURT

Shirley M. Kearing, Pro Se
For the Petitioner
4200 Cathedral Avenue, N.W.
Washington, D.C. 20016
(202) 244-6198

FILED OCTOBER 10, 1989

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Case No. 86-00913
SHIRLEY M. KEARING,	)	(Chapter 11)
Debtors	)	

REQUEST BY BANKRUPTCY JUDGE
FOR WITHDRAWAL OF REFERENCE IN PART
PURSUANT TO DISTRICT COURT
LOCAL RULE 602(a)

The Bankruptcy Judge hereby requests, pursuant to District Court Local Rule 602(a), that the District Court, using its discretionary power provided by 28 U.S.C. § 157(a), withdraw the reference of this case, in part, for the sole purpose of hearing the Trustee's "Emergency Motion for Issuance of Order to Show Cause" (copy attached), seeking to hold the Debtors in contempt for failing to comply with this Court's order of April 25, 1988, requiring the Debtors to cooperate with the Trustee in the sale of the estate's property at

4801 Van Ness, N.W.[1] The request is filed for the following reasons:

The procedures required by Bankruptcy Rule 9020 in conjunction with District Court Local Rule 602 and Bankruptcy Rule 9033 are cumbersome for purposes of imposition of coercive contempt sanctions.[2] For example, if a proposed contempt order is entered and objections thereto are

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[1]As discussed in greater detail under "Additional Information" the Trustee Additionally seeks to incarcerate Ms. Kearing for continuing contempt already adjudicated by an Order of September 30, 1988 subsequently adopted by the District Court.

[2]In this Court's view Rule 9020 works well with respect to compensatory contempt sanctions but, because of the delays in any order becoming final, it does not work efficiently when any modicum of urgency exists in compelling compliance with the Court's orders by way of coercive contempt sanctions. If the Trustee's motions are granted, any sanctions would undoubtedly be coercive because the Court has previously found that Ms. Kearing has no property or income of her own from which compensatory sanctions could be paid. The threat of compensatory sanctions is simply unlikely to encourage compliance.

filed, lengthy delays would be encountered as a result of the time necessary for designation of record, for preparation and transmission of a transcript and for submission of briefs in accordance with Local Rule 603.

In addition, the Trustee is attempting to market the property now. If the Trustee's allegations are well-founded that the Debtors have been interfering with his marketing efforts in violation of this Court's Order of April 25, 1988, and an order for coercive contempt sanctions is entered by this Court, a substantial delay of many weeks would be inevitable before the order would become effective. Such delay would be unreasonable and would deprive the Trustee and the creditors of the estate of the advantages of marketing of the property in the prime selling season of the fall.

It is estimated the hearing on the Trustee's motion would take one hour. The Bankruptcy Judge remains prepared to handle the matter pursuant to Bankruptcy Rule 9020 if the District Court is unable to hear the matter promptly or if it determines that the interests of justice otherwise do not warrant withdrawal of the reference (for example because review under Rule 9020 would be expedited).

Additional Information

By way of background, attached are copies of this Court's Orders of April 25, 1988, directing the Debtor's cooperation, of September 30, 1988 (holding Shirley M. Kearing in contempt for failing, inter alia, to permit access to the premises to allow them to be shown to prospective purchasers), and of February 6, 1989, directing that the Trustee take possession of the premises after they [sic] had

suffered a fire. A copy of the District Court's Order of August 2, 1989 affirming the contempt order is attached.

The prior contempt hearing involved Ms. Kearing's earlier failure to cooperate in the sale of the property at a time when she still occupied the house. The Bankruptcy Court held her in contempt (for failing to allow prospective purchasers to visit the property) and the contempt order was affirmed upon review by the Honorable Thomas Penfield Jackson. Because the house had been damaged so extensively by the fire, sales efforts were temporarily halted. The question of whether Mrs. [sic] Kearing would cooperate in the sale was thus temporarily moot, and Ms. [sic] Kearing was never actually incarcerated.

The Trustee is of the view that the September 30, 1988, contempt order is itself a basis for Ms. Kearing being

incarcerated. Although the fire damage caused her temporarily to be incapable of contempt because the property could not be sold while damaged, once the premises were restored to saleable condition in September, 1989, she again allegedly resumed her contumacious conduct. Because it is the District Court's [margin note of Judge Teel: on appeal in US Court of Appeals 9/2/89] contempt order and because the Bankruptcy Judge does not enjoy the Article III status under the Constitution, the District Judge arguably is the appropriate judge to hear the question of whether the Debtor has failed to remain purged of contempt. Such doubts about whether "purge hearings" ought to be heard by the Bankruptcy Judge form an additional basis for withdrawal of the reference.

Status in Bankruptcy Court

This Court held a hearing on the

Trustee's Emergency Motion on October 6, 1989. The Debtors failed to appear. The Debtors had been notified by hand-delivery of the hearing. The Bankruptcy Court will not issue a ruling under Bankruptcy Rule 9020 pending resolution of the question of withdrawal of the reference.

Because Mrs. Kearing has had appointed counsel based on inability to afford counsel in regard to the earlier contempt proceeding, the Court arranged for an attorney from the District Court's list of attorneys who may serve as appointed counsel to be present at the hearing in the event that Ms. Kearing again requested counsel. That attorney, Samuel Edgar Wilhite, attended the hearing of October 6, 1989, and has reviewed the papers but was not appointed because Ms. Kearing failed to appear. Joseph Zitomer, the attorney who handled an earlier contempt proceeding

against Ms. Kearing, was unavailable.

Dated: October 10, 1989

/s/ S. Martin Teel, Jr.
S. MARTIN TEEL, JR.
United States Bankruptcy Judge

FILED FEBRUARY 6, 1989

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Case No. 86-00913
SHIRLEY M. KEARING,	)	(Chapter 11)
Debtors	)	

ORDER DENYING RECUSAL

It is hereby

ORDERED that the Motion Request for Judge Teel To Recuse Himself From This Chapter 11 Reorganization Case is DENIED.

Dated: February 6, 1989.

/s/ S. Martin Teel, Jr.
S. MARTIN TEEL, JR.
United States Bankruptcy Judge

FILED JANUARY 6, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Case No. 86-00913
SHIRLEY M. KEARING,	)	(Chapter 11)
Debtors	)	

CERTIFICATION RE APPEAL PENDING
AS CIVIL ACTION NO. 88-1232
IN DISTRICT COURT

Pursuant to the District Court's Order, filed August 12, 1988, as Docket Entry ("DE") No. 14 in Civil Action No. 88-1232, and after considering the motion for leave to appeal (DE #13 in Civil Action No. 1232), the opposition thereto filed by the Trustee (DE #222 in this case), and the statement of Standard Federal Savings Bank (DE #223 in this case), the Bankruptcy Court certifies its opinion regarding whether the interlocutory orders appealed involved a "controlling question of law as to which there is a substantial ground for difference of opinion and whether an

immediate appeal from the order[s] [sic] may materially advance the ultimate termination of the case" as follows:

A. ORDER GRANTING TRUSTEE'S APPLICATION TO EMPLOY COUNSEL

1. Absence of Controlling Question of Law as to Which there is Substantial Ground for Difference of Opinion

The interlocutory order entered April 11, 1988, granting the Trustee's application for authority to employ counsel under a general retainer as necessary employment "in the best interests of the estate and its creditors," is squarely based upon the express authority of 11 U.S.C. § 327(a). That Code provision states in relevant part:

> (a) [T]he trustee, with the court's approval, may employ one or more attorneys ... that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under [title 11.] [sic]

In light of the explicit authority for the Order entered April 11, 1988, it is the opinion of this Court that the Order does ot involve a controlling question of law as to which there is a substantial ground for difference of opinion. Thus, on that basis, the motion for leave to appeal should not be granted.[3]

2. Absence of Material Advancement of

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[3] This Court reached its decision upon a determination that the employment of the attorney for the trustee "is necessary and ... in the best interests of the estate and its creditors ...." Thus, the Order contains a reasonable basis upon which the Court made its determination to grant the trustee's application. Interlocutory appeals of discretionary or factual decisions of this nature, where the Bankruptcy Court has applied the correct legal standard, are ordinarily not to be granted. In re Committee of Asbestos-Related Litigants, 749 F.2d 3, 5 (2nd Cir. 1984) ("interlocutory appeals of essentially factual questions are especially disfavored")' In re Tidewater Group, Inc., 22 B.R. 500, 506 (N.D. Ga. 1982); In re Executive Office Centers, Inc., 75 B.R. 60, 61 (E.D. La. 1987); In re San Juan Hotel Corp., 50 B.R. 326 (D. P.R. 1986); 3 Collier on Bankruptcy, Par.3.03 at p. 186 (15th Ed.).

Ultimate Termination of Case by an Immediate Appeal

An appeal of the April 11 Order - immediate or otherwise - would have no effect on advancing the ultimate termination of this case. The Order expressly provides that compensation for the trustee's attorney will be paid only as allowed by the Court "upon proper application ...." Thus, the debtors' objection to the April 11, 1988, Order, on the basis that the estate cannot afford the employment could be appropriately and effectively raised by their filing in Bankruptcy Court their objections to any future applications for payment filed by the trustee's attorney, rather than through their present appeal. Accordingly, it is the opinion of this Court that no appeal should be granted on this basis.

Conclusion Re April 11, 1988, Order

It is the opinion of this Court that

motion for leave to appeal the April 11, 1988, Order granting the Trustee's application for employment of an attorney should be denied inasmuch as the Order does not involve a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal would not materially advance the ultimate termination of the case.

B. ORDER GRANTING THE TRUSTEE'S MOTION TO COMPEL THE COOPERATION OF THE DEBTORS

The Order Granting the Trustee's Motion to Compel the Cooperation of Debtors was entered on April 25, 1988, after adequate opportunity for the Debtors to be heard.[4]

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[4] The motion was served on January 4, 1988, and filed on February 8, 1988. No opposition was ever filed as required by Local Rules of this Court. At a hearing of April 7, 1988, on other matters, the Court permitted the Trustee to address the motion to compel cooperation. Shirley Kearing argued against granting of the motion. Although Leon R. Kearing was in the courtroom, he chose not to announce his attendance and he was not heard on the matter. However, he failed to file any

On September 30, 1988, this Bankruptcy Court entered an Order of Contempt pursuant to Bankruptcy Rule 9020, holding Shirley M. Kearing in contempt for failure to comply with the Order of April 25, 1988. The contempt order is subject to review pursuant to Bankruptcy Rule 9033(b) and District Court Rule 6033 [sic]. Objections were timely filed to the contempt order of September 30, 1988.

1. Damages Award

The Order of April 25, 1988 required a turnover of certain rentals. The Debtor defied that order and exhausted the funds. That turnover order is now moot insofar as prospective effect is concerned. However, the turnover order still is not moot in its entirety because it resulted in an award of compensatory damages for contempt. The

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written opposition to the motion either before or after the hearing.

turnover order, while originally interlocutory, ought to be viewed now as an appealable, final order incident to the appeal by Mrs. Kearing of civil contempt. The Order is severable from any other ongoing litigation in the bankruptcy case.

2. Discovery Orders

In contrast, the provisions of the order of April 25, 1988, that still retain prospective effect[5] were in the nature of discovery orders to facilitate the Trustee's ongoing efforts to sell the Debtors' home.

Those provisions of the order require the property to be made available for inspection by the Trustee and members of the public in order to assure a sale at the best price. The sale of property of the

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[5] Ordinarily a litigant may not obtain review of a discovery order except by way of appeal of an order of criminal contempt.

Debtors and discovery ordres incident thereto constitute "core" matters, reviewable by the District Court only upon appeal, and not by way of de novo review. 28 U.S.C. §§ 157, 158; Bankruptcy Rules 8001, 9033. Any order of sale -- the ultimate final order sought pursuant to the Trustee's sales efforts -- will be subject to review by the District Court by way of appeal. Discovery orders in ongoing litigation are generally not subject to interlocutory appeals. Atlantic Richfield Co. v. U.S. Dept. of Energy, 769 F.2d 771, 780-781 n. 62 ((D.C. Cir. 1984); Matter of Int'l. Horizons, Inc., 689 F.2d 996, 1001 (11th Cir. 1982). The courts go even further and hold that a party-litigant to whom a discovery order has been issued (as opposed to a non-party witness) may not appeal a civil contempt order for refusing to comply with the discovery order. Doyle

v. London Guarantee & Accident Co., 204 U.S. 599, 603 (1907); Int'l Ass'n of Machinists v. Eastern Airlines, Inc., 849 F.2d 1481, 1484 (D.C. Cir. 1988). While the District Court is, of course, granted authority under Bankruptcy Rules 9020 and 9033 to review de novo any order of contempt to which a timely objection is made, the District Court is not required to review the underlying interlocutory order which the Debtor has been found to have violated. The policies against interlocutory review of discovery orders, including the prevention of delay proceedings, see American Express Warehousing, Ltd. v. Transamerica Ins. Co., 380 F.2d 277, 280 (2d Cir. 1967), are particularly pertinent in the context of an ongoing bankruptcy estate liquidation where allowance of the appeal may frustrate the goal of prompt liquidation of the estate

for the benefit of creditors and other interested parties. The District Court has discretion to grant an interlocutory appeal, but the Bankruptcy Court recommends against it. The questions raised by the discovery provisions of the April 25, 1988, order are not such as to warrant an immediate appeal. None of them is a "controlling question of law as to which there is a substantial ground for difference of opinion" and an immediate appeal would not "materially advance the ultimate termination of the case."[6]

C. ORDER APPROVING THE SETTLEMENT OF MOTIONS SEEKING RELIEF FROM STAY, COMPROMISING MUTUAL CLAIMS, AND AUTHORIZING TRUSTEE TO EXECUTE DEEDS IN LIEU OF FORECLOSURE AS TO

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[6] The concluding provision of the Order of April 25, 1988, requiring the Debtors generally to cooperate, if read as being limited to the specific items of cooperation required, is plainly not erroneous. To the extent it might be read otherwise, the District Court may wish to grant an appeal for purposes of clarifying the scope of this language.

UNITS 201, 502, AND 504, 444 [sic]
CONNECTICUT AVENUE, N.W.,
WASHINGTON, D. C.

The deeds in lieu of foreclosure as to Units 201, 502, and 504, 444 [sic] Connecticut Avenue, N.W., Washington, D. C., have already been transferred, as the District Court so ruled in its Memorandum and Order of July 20, 1988 (DE #12 in Civil Action No. 88-1232. See 11 U.S.C. § 363(m); Sun Valley Ranchers, Inc. v. Equitable Life Assur. Soc., 823 F.2d 1373, 1374-5 (9th Cir. 1987). The appeal of the order approving the settlement of motions seeking relief from stay, compromising mutual claims, and authorizing the Trustee to execute those deeds in lieu of foreclosure is moot.

Whatever character the proposed appeal may have had befored, the questions presented on appeal are now academic and can no longer be deemed to present a

controlling question of law as to which there is a substantial ground for difference of opinion. Nor would an appeal to consider those moot questions materially advance the ultimate termination of the case. Thus, whether the appeal is viewed as an appeal from a final or an interlocutory order, it ought to be denied as moot.

Dated: January 6, 1989.

/s/ S. Martin Teel, Jr.
S. MARTIN TEEL, JR.
United States Bankruptcy Judge

FILED SEPTEMBER 16, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	
Shirley M. Kearing	)	Case No. 86-00913
Debtors, Pro Se	)	(Chapter 11)

STATEMENT OF INTENT

On April 21, 1988, the Debtors filed a "notice of appeal" to the District Court for the District of Columbia concerning "other orders forthcoming at hearing on April 7, 1988," which now includes the bankruptcy court's order "to compel cooperation by debtors," that was finally entered on April 25, 1988.

On August 12, 1988, the District Court for the District of Columbia filed an "order" that, among other things, explicitly directed to this court:

> ... that all further proceedings with respect to this appeal are stayed pending submission of the Bankruptcy Judge's written certification and

> accompanying materials to this Court....

On August 16, 1988, this court ordered that one of the Debtors, Mrs. Shirley M. Kearing, shall:

> appear in this Court on September 14, 1988, at 3:00 p.m., and show cause why she should not be punished for civil contempt of court because of her misconduct in failing to obey, comply with and carry out the provisions of the order granting the Motion to Compel Cooperation of the Debtors filed by the Trustee, duly entered herein on April 25, 1988, as set forth in the memorandum in support of the Motion for Issuance of Show Cause Order served on Shirley M. Kearing by mail on May 19, 1988.

Regardless of the fact that this court is, itself, in contempt of the District Court's order, the sanctions of the bankruptcy judge to punish are beyond the authority of the bankruptcy court for the District of Columbia as stated by the "Omega ruling" which does not allow this court to inflict such mulct. See In re Omega Equipment Corp., 51 B.R. 569 (Bkrtcy.

DC DC 1985).

In the "Omega ruling," Judge Jackson, who also is the assigned judge to the Debtor's appeal in this bankruptcy proceeding and is the judge who ordered the "stay" above, stated in the "Omega" case that the:

> present question whether a United States bankruptcy court, established by Congress under Article I of the Constitution, possesses the power of judicial contempt as among those inherent in its general powers conferred by 11 U.S.C. Section 105. The Court [that is, the District court for the District of Columbia] concludes that, as is the case with U.S. magistrates and other non-Article III adjudicative officers, BANKRUPTCY JUDGES AT PRESENT CANNOT BE, AND HAVE NOT BEEN, ENDOWED WITH CONTEMPT POWER, BUT RATHER, IN MATTERS OF CONTEMPT ARE LIMITED TO THE SUBMISSION OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE PARENT FEDERAL DISTRICT COURT, WITH A FINAL ADJUDICATION OF CONTEMPT TO EMANATE, IF AT ALL, FROM THE DISTRICT JUDGE FOLLOWING DE NOVO REVIEW.

Debtors believe that this court has far exceeded its authority, knowingly and

willfully, in violation of both the "stay of all proceedings" and of its authority for any "contempt" sanctions. Until such time as these matters - that is, the entire appellate proceeding now pending in the District Court for the District of Columbia - are resolved the Debtors must decline, in compliance with the District Court's "stay order," to participate in any further activities in the bankruptcy court for the District of Columbia which deal with the bankruptcy court's order "to compel cooperation by debtors;" or for that matter, any proceedings in which the appointed trustee is allowed any standing.

Debtors have submitted this "statement of intent;" and to the best of their knowledge, information and belief, formed after inquiry, maintain that this "statement of intent" is well grounded in fact and is warranted by existing law and

that this intent is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or indeed, abuse of process; but is in the "interests of justice" and the rights and protections granted the Debtors under Article V of the United States Constitution.

Dated: September 14, 1988

/s/ Shirley M. Kearing
Shirley M. Kearing, Debtor, Pro Se

/s/ Leon R. Kearing, M.D.
Leon R. Kearing, Debtor, Pro Se

FILED JULY 12, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Case No. 86-00913
SHIRLEY M. KEARING,	)	(Chapter 11)
Debtors	)	

ORDER DENYING CONTINUANCE
ON HEARING ON ORDER TO SHOW CAUSE

Upon reading and consideration of the application of Leon R. and Shirley M. Kearing, the Debtors, for an order to continue the July 13, 1988 hearing on the order to show cause why the Debtors ought not to be held in civil contempt, it is

ORDERED that the application for continuance is DENIED.

Dated: July 12, 1988.

/s/ S. Martin Teel, Jr.
S. MARTIN TEEL, JR.
United States Bankruptcy Judge

FILED MAY 19, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	)	
Leon R. and	)	
Shirley M. Kearing	)	Case No. 86-00913
Debtors.	)	(Chapter 11)

DECLARATION OF JOHN W. GUINEE, JR. TRUSTEE
IN SUPPORT OF MOTION FOR ISSUANCE
OF SHOW CAUSE ORDER

District of Columbia, ss:

John W. Guinee, Jr., Trustee herein, hereby declares pursuant to 28 USC § 1746 as follows:

1. On December 15, 1987, this Court appointed me Trustee in the above-referenced matter.

2. As of the date of this affidavit, I have not received from the debtors any of the money or documents required to be turned over to the Trustee by the debtors pursuant to this Court's April 25, 1988 order.

3. On May 3, 1988, I spoke with Ms.

Kearing, debtor herein, and made arrangements to meet her at her house located at 4801 Van Ness Street, N.W., Washington, D.C., to discuss with her the various bankruptcy matters.

3. [sic] When I arrived at her house at the designated time, Mrs. Kearing was not home. I waited outside the home for a reasonable period of time, and Mrs. Kearing never showed up.

4. [sic] While at the home, I had an opportunity to observe the condition of the grounds. The grass had not been cut and the overall condition of the exterior of the property was poor.

5. [sic] On May 5, 1988, I had an opportunity to discuss with Mrs. Kearing her failure to show up for our appointment. We also discussed the fact that she had not turned over the various documents and information that the court had ordered her

to turn over in its April 25, 1988 order. At that time, Mrs. Keraing informed me that she had no intention of ever complying with the court order. She indicated taht she was willing to go to jail before so complying.

7. It has become so clear to me that without further order of this court, the debtors will continue to interfere with my performance of my statutory duties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of May 1988.

/s/ John W. Guinee, Jr.
John W. Guinee, Jr., Trustee

FILED MAY 19, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	)	
Leon R. and	)	
Shirley M. Kearing	)	Case No. 86-00913
Debtors.	)	(Chapter 11)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR ISSUANCE
OF SHOW CAUSE ORDER

In support of his Motion for Issuance of Show Cause Order, John W. Guinee, Jr., Trustee, by counsel, respectfully states as follows:

1. On April 25, 1988, this Court filed and entered an order granting the Motion to Compel Cooperation by Debtors filed by the Trustee (the "Order"). A copy of the Order is attached hereto as Exhibit A.

2. The Order specifically requires the debtor Shirley Kearing to: (1) turn over to the Trustee the funds of Debtors at the American Security Bank, N.A. (the Court finding that these funds represented rents

for three condominium units then comprising part of the bankruptcy estate, which were received after the Trustee was appointed); (2) immediately turn over to the Trustee any and all rents that she may in the future collect from the tenants of Units 201, 502 and 504, 4444 Connecticut Avenue, N.W., Washington, D.C., and (3) direct said tenants to make all future rent payments directly to the Trustee.[7]

3. The Order also specifically requires Ms. Kearing to mail to the Trustee by April 17, 1988[8] "copies of all bank statements, cancelled checks, deposit slips

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[7] Subsequently to the entry of the Court's Order, the Trustee executed deeds in lieu of foreclosure so that the condominium units are no longer part of the estate.

[8] While the order was not filed and entered until April 25, 1988, this April 17, 1988 deadline was set by the Court in its order from the bench. Ms. Kearing was present at this hearing and was aware of this date.

and withdrawals slips for the Debtors' account at American Security Bank, N.A."

4. The Debtors were also ordered to cooperate with the Trustee and his agents in an effort ot obtain offers to p;urchase the real property located at 4801 Van Ness Street, N.W., Washington, D.C. Specifically, the Court directed the Debtors to maintain the premises in a clean and orderly condition.

5. Debtors have failed and refused to comply with and have disobeyed and disregarded the provisions of the Order.

6. As more particularly shown by the Affidavit of John W. Guinee, Jr. attached hereto as Exhibit B, the debtors have disregarded two written requests (See Exhibit C) and have failed to turn over to the Trustee the funs of the Debtors at American Security Bank, N.A. The Debtors have also failed to furnish to the Trustee

copies of all bank statements and other records of accounts at American Security Bank.

7. In addition, the Debtors have not maintained the Van Ness premises in a clean and orderly condition. While the Trustee has not been permitted access to the interior portions of the house, the yard is in total disarray. The grass has not been cut and the weeds are overgrown.

8. On Tuesday, May 3, 1988, the Trustee spoke with Mrs. Kearing and arranged to meet her at her house to discuss the bankruptcy. Mrs. Kearing failed to keep this appointment.

9. Obviously, the Debtors have failed and refuse to comply with the Order. In fact, Mrs. Kearing has informed the Trustee that she has no intention of ever complying with the provisions of the Order.

10. By reason of the failure and

refusal of the Debtors to comply with the provisions of the Order, the Trustee has been prevented from performing his statutory duties.

WHEREFORE, the Trustee moves this Court for an order requiring the Debtors to answer and show cause why they should not be adjudged in contempt of this Court, and, upon return of said order, to adjudge the Debtors in contempt of this Court for having violated and disregarded the terms of the Order, and for such other relief as this Court deems appropriate.

Respectfully submitted,

/s/ Renee Franklin Hill

Peter R. Kolker #25478
Renee Franklin Hill #383932
ZUCKERMAN, SPAEDER, GOLDSTEIN,
TAYLOR & KOLKER
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 778-1800

Counsel for the Trustee

FILED MAY 19, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	)	
Leon R. and	)	
Shirley M. Kearing	)	Case No. 86-00913
Debtors.	)	(Chapter 11)

MOTION FOR ISSUANCE
OF SHOW CAUSE ORDER

John W. Guinee, Jr., Trustee herein, by counsel, hereby moves this Court for entry of an order requiring Leon R. and Shirley M. Kearing, debtors, to show cause why they should not be held in contempt for failure to comply with this Court's Order Granting Motion To Compel Cooperation By Debtors, filed and entered by this Court on April 25, 2988. A Memorandum in support of this Motion and a proposed Order are attached hereto.

Respectfully submitted,

/s/ Renee Franklin Hill
Peter R. Kolker #25478
Renee Franklin Hill #383932
ZUCKERMAN, SPAEDER, GOLDSTEIN,
TAYLOR & KOLKER

1201 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 778-1800

Counsel for the Trustee

FILED APRIL 11, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Case No. 86-00913
SHIRLEY M. KEARING,	)	(Chapter 11)
Debtors	)	

ORDER AUTHORIZING EMPLOYMENT OF
COUNSEL UNDER GENERAL RETAINER

At Washington, D.C., this 7th day of April, 1988:

Upon the application of John W. Guinee, Jr., Trustee herein, praying for authority to employ and appoint Zuckerman, Spaeder, Goldstein, Taylor & Kolker under a general retainer to represent the trustee herein, and upon the Affidavit of Peter R. Kolker, Esquire, a member of Zuckerman, Spaeder, Goldstein, Taylor & Kolker is duly qualified to represent the Trustee before this Court and the Court being satisfied that Zuckerman, Spaeder, Goldstein, Taylor & Kolker represents no interests adverse to

the bankruptcy estate or in the matters upon which it is to be engaged, that its employment is necessary and would be in the best interests of the estate and its creditors, and that the case is one justifying a general retainer, and it appearing that no notice or hearing on said application may be given, it is

ORDERED, that John W. Guinee, Jr., Trustee herein, is authorized to employ the law firm of Zuckerman, Spaeder, Goldstein, Taylor & Kolker generally, as attorneys for the trustee and the estate, with compensation to be paid in such amounts as may be allowed by the Court upon proper application or applications thereof.

/s/ S. Martin Teel, Jr.
S. MARTIN TEEL, JR.
United States Bankruptcy Judge

FILED FEBRUARY 8, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re)
)
LEON R. AND)
SHIRLEY M. KEARING,)
Debtors)

MOTION TO COMPEL
COOPERATION BY DEBTORS

John W. Guinee, Jr., Trustee herein, moves this Court to compel the Debtors to cooperate with the Trustee in all matters relating to the administration of the estate in this proceeding and, specifically, in the listing of the real property located at 4801 Van Ness St., N.W., Washington, D.C. ("Property"), presently occupied by Debtors, and for reasons therefor states as follows:

1. He is the duly appointed, qualified and acting Trustee in these proceedings.

2. In his business judgement [sic], sale of Property, which sale will recapture

substantial equity for use in the administration of the estate and/or to be used as the basis for construction of a Plan of Arrangement for the reorganization contemplated in these proceedings, is necessary at this time.

3. Delay in listing the property [sic] for sale will frustrate the efforts to determine, by exposure in the market place, the true value of the asset, to the detriment of all parties.

4. In earlier states of this proceeding, Debtors solicited sale of Property and included its sale in a Plan of Arrangement filed with this Court on August 10, 1987.

5. On information and belief, on or about January 16, 1988, Debtors refused entry to the premises of an agent selected by the Trustee to estimate a fair market price for Property, thus interfering with

the Trustee in the performance of his duties. Trustee has been informed that Debtors, or one of them, stated that admission would not be permitted unless a court order were to be presented.

6. Initial analysis of the economic condition of the estate, in the opinion of the Trustee, indicates that the equity which appears to be "locked into" Property must be recovered either to pay for litigation proposed by Debtors (as to which litigation Trustee takes no position at this time) or to provide a monetary base for the structuring of a Plan of reorganization.

7. It appears that it is the intent of the Debtors to reverse previous positions taken during the proceedings and to delay by various means, some of which are allready [sic] under way, the orderly administration of the case, a possibilitty

[sic] which has been noted by this Court.

8. No firm determination as to the disposition of Property need be made at this time, nor is such firm determination requested herein. All that will result immediately from the granting of this motion is the listing for sale subject to court approval at a later time of any contract sale.

9. It appears that a clarification of the duties of the Debtors vis-a-vis the Trustee in the carrying out of his duties is needed at this time, not only for the benefit such clarification will provide to the Trustee but also as instruction to the Debtors.

WHEREFORE, the premises considered, your movant requests that Debtors be instructed to make Property available for inspection by an agent to be designated by the Trustee, at all reasonable times until

further Order of this Court, that Debtors be instructed to cooperate with Trustee and his agent(s) in the efforts to obtain offers to purchase the property, by agreeing to the affixing to the property of a lock-box or other device which will facilitate entry into the property by duly licensed real estate agents, by maintenance of the premises in a clean and orderly condition, so as to make the premises attractive to prospective purchasers and assist in obtaining high prices in any offers to purchase, and to cooperate with Trustee in every other effort which he undertakes in the fulfillment of his statutory duties.

Alternatively, Trustee requests that Debtors be ordered to vacate Property within two weeks, and to leave premises in a "broom clean" condition.

Respectively submitted,

/s/ John W. Guinee, Jr.

John W. Guinee, Jr.
P.O. Box 2038
Reston, Virginia 22090
703 435 3782

FILED JANUARY 19, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	Case No. 86-00913
Shirley M. Kearing	)	(Chapter 11)
Debtors	)	
	)	

PRAECIPE

The Clerk will please enter the enclosed Bond, as of December 15, 1987 covering the Trustee appointed in this case.

/s/ John W. Guinee, Jr.
John W. Guinee, Jr.
P.O. Box 2038
Reston, Virginia 22090
(703) 435 3782

FILED JANUARY 14, 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	Case No. 86-00913
Shirley M. Kearing	)	(Chapter 11)
Debtors	)	
	)	

EMERGENCY APPLICATION
FOR A TEMPORARY RESTRAINING ORDER
AND MOTION FOR A STAY OF ORDER
PENDING APPEAL

COMES NOW, Leon R. and Shirley M. Kearing, Debtors, by and through their attorney, Michael R. Huffstetler, and moves this Honorable Court to issue during the pendancy of an appeal filed on January 14, 1988, of the final orders of the United States Bankruptcy Court for the District of Columbia, a restraining order against the appointed trustee, John W. Guinee, and the granting of a motion for a stay of order for appointment of a trustee pending appeal.

As grounds in support of their emergency

application, the Debtors state as follows:

1. That this Honorable Court has jurisdiction over this Application pursuant to 28 U.S.C. Section 1334(d); F.R.Civ.P. 62(d), 65; 11 U.S.C. Section 105(a); Bankruptcy Rule 7065, 8005.

2. That the Debtors, Leon R. and Shirley M. Kearing, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on December 10, 1986.

3. That on, or about, January 4, 1988, the Bankruptcy Court for the District of Columbia, filed and entered three (3) final orders:

> (a) denial of "emergency application for removal of the Chapter 11 trustee, John W. Guinee, Jr., and for appointment of an examiner;"
>
> (b) the denial of Debtors', pro se, "application for debtors-in-possession for leave to hire attorney and payment of administrative expense for debtors' counsel interim compensation" and "affirmation in support of debtors' application for retention of

counsel," and

(c) "turnover of funds of the Debtors'estate."

4. That the United States Trustee never consulted with any parties in interest as to his appointment of John W. Guinee, Jr., as Trustee as required by 11 U.S.C. Section 1104(c).

5. That the Trustee, John W. Guinee, Jr., did not file any acceptance of appointment, or was not approved by the Court as required by 11 U.S.C. Section 322(a), and Bankruptcy Rules 2008 and 2010(c).

6. That the Trustee, John W. Guinee, Jr., has neither investigated "the acts, conduct, assets, liablities, and financial condition of the debtor[s]" nor "file[d] a statement of any investigation" as required by 11 U.S.C. Section 1106[3] and [4](A).

7. That the Trustee has, in writing, notified the Debtors of:

(a) his intention to dispose of real property of the estate;

(b) his plans to enter into settlement agreements on other real property; and

(c) full payment of all claims - a so-called "100% plan" - whether or not debtors consent, or even have the ability, to carry out such a plan.

(d) his approval to the application of the previous attorney for compensation even though Debtors have, as debtors in possession, filed written objections to that compensation with no notice or hearing being held to date.

8. That the Trustee has not, in writing, notified the debtors of:

(a) any transfer of estate funds from debtors' previous attorney's escrow account or if, in fact, a new account has even been opened; and

(b) the fact that he has neither requested nor received any of the files from Debtors'previous attorney.

9. That the debtors' current attorney has requested the complete file on this

bankruptcy proceeding but the previous attorney has denied the release of the debtors' files, the Clerk of the Bankruptcy Court has been unable, or unwilling, to present a complete file of the proceedings for viewing to date and the Trustee has been of no assistance in obtaining any files.

8. That the debtors did not file this application in the Bankruptcy Court due to that Court's:

> (a) denial of debtors application for removal of trustee that dismissed all reasons given for rescission of the appointment of that trustee (of which 4, 5, 6 and part of 7 above herein were included) as "... none..." being "... meritorious;"
>
> (b) adverse rulings affecting both the debtors and the creditors by allowing the sale of an income-producing property at less than fair market value, converting the proceeds to cash collateral and then ordering the payment of administrative expenses;
>
> (c) entering of consent orders for reaffirmationof pre-petition debts

without any plan whatsoever being proposed or submitted;

(d) allowing repossession of debtors' automobile without notice and hearing and ruling;

(e) refusal to allow debtors in possession use of any cash collateral funds for basic upkeep of the estate, maintenance of property or emergency funds;

(f) total neglect for notice and hearing and ruling on Debtors motion on November 6, 1987, for appointment of an examiner before the Court's appointment on December 9, 1987, of a trustee;

(g) appointment of a trustee almost one year to the day from the filing of the order for relief, thereby relieving debtors as debtors in possession on the grounds of "incompetence," even though as debtors had complied with all Court orders and Code provisions for a debtor in possession;

(h) failure to direct the U. S. Trustee to appoint a creditors' committee pursuant to 11 U.S.C. Section 1102(a)(1), or respond to any of the Debtors pleas for help in this proceeding;

(i) currently sitting judge will be replaced on February 8, 1988.

WHEREFORE, Debtors pray this Honorable

Court:

1. That a temporary restraining order against said trustee be granted to protect and prevent the rights of the Debtors and all parties in interest from the use or abuse of the Trustee's powers as allowed by 11 U.S.C. Section 362(e) and (m), as said trustee has written that he intends to sell, transfer or remove said property of the estate, thereby giving sufficient cause for the dissipation of assets of this estate.

2. Unless temporarily restrained from so doing, immediate and irreparable injury, loss, or damage will result to this estate before notice can be served and a hearing had on an application for such temporary restraining order.

3. That a stay of the order for the appointment of a trustee and for other relief pending appeal be granted.

Dated: January 14, 1988

/s/ Michael R. Huffstetler
by R. Clifton
Michael R. Huffstetler
Bar No. 375672

Ivins, Phillips & Barker
1700 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

(202) 393-7600

FILED DECEMBER 23, 1987

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	Case No. 86-00913
Shirley M. Kearing	)	(Chapter 11)
Debtors	)	
	)	

EMERGENCY APPLICATION FOR REMOVAL OF TRUSTEE AND APPOINTMENT OF AN EXAMINER

TO: Honorable George F. Bason, Jr., Bankruptcy Judge

The emergency application of Leon R. Kearing and Shirley M. Kearing, by their attorney respectfully represents:

1. This emergency application is pursuant to 11 U.S.C. §§ 324(a) and 1105 seeking the removal of a trustee in these proceedings and reinstatement of the applicants as debtors in possession.

2. The petition for relief was filed herein on December 10, 1986, and applicants were debtors in possession until John W. Guinee, Jr., was appointed trustee in these

proceedings by the United States Trustee on December 16, 1987, pursuant to a court order dated December 9, 1987.

3. Applicant should be reinstated as debtors in possession because of events and conditions that existed at the time the Court ordered the U.S. Trustee to appoint a trustee, some of which were unknown to the Court, and because of subsequent events and conditions with respect to the actual performance, or lack of performance, by the United States Trustee and the trustee in office.

(a) On January 20, 1987, debtors filed with the Clerk of the Court a notice of their change of address from 4341 Embassy Park Drive, N. W., Washington, D. C. 20016, to the current address of 4801 Van Ness Street, N. W., Washington, D. C. 20016 (see Exhibit A).

(b) On April 15, 1987, Chevy Chase Savings Bank, F.S.B., by its counsel, David N. Prensky, Esq., filed a motion to convert this case to a chapter 7 proceeding, or in the alternative, to appoint a trustee (see Exhibit B). No notice or hearing was held.

(c) On July 17, 1987, Chevy Chase Savings Bank, F.S.B., by its counsel, David N. Prensky, Esq., filed a praecipe to withdraw, without prejudice, the motion to convert this case to a chapter 7 proceeding or, in the alternative, to appoint a trustee (see Exhibit C).

(d) On October 6, 1987, Leon R. and Shirley M. Kearing, acting as debtors in possession, pro se, filed a personal plea for intervention by the Court concerning their bankruptcy. This document was presumably forwarded to the Office of the United States Trustee (see Exhibit D).

(e) On the same day, October 6, 1987, again as debtors in possession, pro se, the Kearings filed a document requesting a hearing on: (1) the application fee by their then attorney, Alfred Lawrence Toombs, Esq.; and (2) debtors' request for consent to handle the sale of the property at 4801 Van Ness Street, N.W., Washington, D.C. (see Exhibit E). No notice or hearing was held.

(f) On October 26, 1987, the Kearings relieved their attorney, Alfred Lawrence Toombs, Esq., from further representation and also sent copies of their letter to the U.S. Bankruptcy Court, and the U.S. Trustee by way of the Court (see Exhibits F and G).

(g) On November 6, 1987, the debtors were notified by letter (and later by telephone) of a hearing on: (1) the Application by Alfred Lawrence Toombs, Esq., For Leave to Withdraw as

Counsel for Debtor in Possession and response by debtors thereto; (2) Request for Approval of the Sale of Real Property at 4801 Van Ness Street, N.W., Washington, D.C.; and (3) Application by Debtors' Counsel for Supplemental Award of Compensation (see Exhibit H).

(h) On November 6, 1987, debtors in possession, pro se filed an Application for: (1) an Expedited Hearing for the Removal of Debtors' Attorney (Mr. Toombs) for Failure to Perform All of the Duties of an Attorney; (2) Revocation of the Order Awarding Debtors' Counsel Interim Compensation and Expenses; (3) Denial of Subsequent Compensation and Expenses to Mr. Toombs; and (4) Request for Appointment of an Examiner (see Exhibit I).

(i) At the hearing, held on November 6, 1987, the Court urged that the debtors in possession retain new counsel to represent them as debtors in possession in these proceedings and that an appearance by counsel should be entered on or before December 7, 1987; or that in the even debtors in possession failed to avail themselves of new counsel during that period the Court intended, unless cause to the contrary be timely show, to appoint a trustee pursuant to 11 U.S.C. § 1104(a) (see Exhibit J)

(j) The Clerk of the Court was ordered to give to all creditors and parties in interest twenty days notice, in the form prescribed by B.R. 2002 of the renewal, at the hearing of November

6, 1987, of the motion previously filed herein by Chevy Chase Savings Bank, F.S.B. for the appointment of a trustee pursuant to 11 U.S.C. § 1104(a) (see Exhibit J). Notice to the debtors was sent to the 4341 Embassy Park Drive address and debtors received late notification after December 1, 1987.

(k) On December 7, 1987, debtors in possession filed with the Court an Application for Leave to Hire an Attorney and For Payment of Administrative Expenses for Debtors' Council Interim Compensation (see Exhibit K).

(l) On December 9, 1987, the Court ordered the appointment of a trustee (see Exhibit L).

(m) On December 16, 1987, the U.S. Trustee, pursuant to the Court's order, appointed John W. Guinee, Jr. as trustee.

(n) On December 17, 1987, debtors received correspondence from John W. Guinee, Jr. (see Exhibit M).

Reasons for Rescission of
Court Order to Appoint Trustee
and Removal of Appointed Trustee

Chevy Chase Savings Bank, F.S.B., by motion for appointment of trustee under 11 U.S.C. § 1104, after notice and hearing, would have been entitled to the appointment

of a trustee upon a showing for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor. By withdrawal of its motion on July 17, 1987, however, it was no longer entitled to hearing.

By renewal of its motion for appointment of a trustee on November 6, 1987, Chevy Chase Savings Bank, F.S.B. should have recited new allegations as to its request, but it failed to furnish any information or evidence that would provide a basis for the allegations. In the absence of any such showing, the appointment of a trustee would serve no benefit to any of the parties in interest involved and should be been denied. In Re Bel Air Associates, Ltd., Debtor, 4 Bankr. 168; 2 Collier Bankr. Cas.2d (MB) 103; 6 Bankr. Ct. Dec. (CRR) 284, May 2, 1980; affd. 706 F.2d 301 (10th Cir. 1983).

Debtors filed an application, as debtors in possession, pro se to hire an attorney and for payment of administrative expenses for debtor's [sic] counsel interim compensation, on December 7, 1987, prior to the Court's order for appointment of a trustee, and within the Court's mandated deadline for the appearance of an attorney. No response was made by the Court.

Even assuming, arguendo, that the appointment of a trustee is appropriate, the order for appointment leaves the responsibility to the U.S. Trustee to actually select the trustee after consultation with parties in interest. 11 U.S.C. § 1104(c). This was not done.

On December 17, 1987, John W. Guinee, Jr., notified debtors that he had been appointed and qualified as their trustee. No filing of acceptance by John W. Guinee, Jr., of appointment, or approval by the

Court has been made as required by 11 U.S.C. § 322(a) and B.R. 2008 and B.R. 2010(c).

Even assuming, arguendo, that the trustee was duly appointed and qualified, 11 U.S.C. §1106[3] requires that the trustee ... investigate acts, conduct, assets, liabilities, and financial condition of the debtor ... and [4](A) ... file a statement of any investigation.

The December 17, 1987, letter from Mr. Guinee states that he has only conversed with the former attorney (Mr. Toombs), counsel for one creditor (Standard Federal Savings and Loan Association) and with one of the debtors (Mrs. Kearing), and that he intends to proceed with various actions even though the letter is dated one day after his appointment as trustee.

Debtors, upon information and belief, have determined that these actions are

contrary to the best interests of the estate, and that the trustee must be removed.

Request for Granting Debtors' Request for Appointment of an Examiner

The debtors' request for appointment of an examiner should, however, be granted. The Court did not respond to the expedited motion by the debtors for appointment of an examiner. Additionally, the U.S. Trustee should have begun on October 6, 1987 (but no later than November 6, 1987) to fulfill his duties and obligations as required by 28 U.S.C. §§ 586(3)(A), (B), (F) and (G).

The debtors had requested assistance in the supervision and progress of their case and the monitoring for compensation and reimbursements filed under 11 U.S.C. § 330, and the debtors had made allegations that their estate was in jeopardy due to the actions of their then current attorney (Mr. Toombs). No action was, or has been,

forthcoming on debtors' motion for the appointment of an examiner.

If the Court does not order the appointment of a trustee, then, pursuant to 11 U.S.C. § 1104(b) the Court shall appoint an examiner to investigate any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the debtors' affairs, if requested by a party in interest, and after notice and hearing, and if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate.

The appointment of a trustee on December 9, 1987, does not comport with judicial economy as set out in H.R. 95-595, at page 402, where Congress stated in part:

> Generally, a trustee would not be needed in any case where the protection afforded by a trustee could equally be afforded by an examiner.

Ultimately, the appointment of an examiner depends upon whether the appointment is in the best interests of creditors and other interests of the estate; the question is one that is equitable and discretionary with the Court. In Re Lenihan, 6, BCD 368, 2 CBC 72 (D. R.I. 1980)

Additionally, the cost, expenses and benefits should be weighed and examined. In Re American Bulk Transport Co., an Iowa Corporation, Debtor, 8 Bankr. 337 Ct. Dec. (CRR) 279, December 15, 1980. No such weighing of costs and benefits has occurred in this case.

Wherefore, applicant respectfully requests that, for the reasons outlined above, after a notice and a hearing, the Court's order for the appointment of a trustee be rescinded, and that John W. Guinee, Jr., be removed as trustee, and

that, alternatively, an examiner be appointed in this case.

/s/ Michael R. Huffstetler
Michael R. Huffstetler
Bar No. 375672

Ivins, Phillips & Barker
1700 Pennsylvania Avenue, N.W.
Suite 600
Washington, D. C. 20006
(202) 393-7600

FILED DECEMBER 16, 1987

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	Case No. 86-00913
Shirley M. Kearing	)	(Chapter 11)
Debtors	)	
	)	

APPOINTMENT OF TRUSTEE
AND DESIGNATION OF REQUIRED BOND

Pursuant to 11 U.S.C. §1104, John W. Guinee, 1514 Inlet Court, Reston, Virginia 22090, is hereby appointed trustee for the estate of the above named debtors.

The bond required of the trustee in this case is hereby fixed at $50,000.00. The bond amount may be increased from time to time by the United States Trustee.

December 15, 1987

/s/ John E. Waites [NED] or [NEO]
John E. Waites
United States Trustee
for Region Four
421 King Street, Suite 410
Alexandria, Virginia 22314
(703) 557-0746

FILED NOVEMBER 6, 1987

NOTE:

ON NOVEMBER 9, 1988, ATTORNEY ALFRED LAWRENCE TOOMBS FILED AN EMERGENCY APPLICATION FOR PROTECTIVE ORDER CITING 11 U.S.C. § 107(b)(2) and BANKRUPTCY RULE 9018(2). ON DECEMBER 3, 1987, THE BANKRUPTCY COURT ISSUED A PROTECTIVE ORDER DELETING WHAT FOLLOWS AS STRIKE-OUTS FOR CONTAINING EITHER SCANDALOUS AND DEFAMATORY MATTER WHICH COULD DAMAGE THE PROFESSIONAL STANDING AND REPUTATION OF THE APPLICANT.

FILED NOVEMBER 6, 1987

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re	)	
	)	
LEON R. AND	)	Case No. 86-00913
SHIRLEY M. KEARING,	)	(Chapter 11)
Debtors in possession	)	

APPLICATION FOR EXPEDITED HEARING FOR REMOVAL OF DEBTORS' ATTORNEY FOR FAILURE TO PERFORM ALL OF THE DUTIES OF AN ATTORNEY, AND FOR REVOCATION OF ORDER AWARDING DEBTORS' COUNSEL INTERIM COMPENSATION AND EXPENSES, AND DENIAL OF SUBSEQUENT COMPENSATION AND EXPENSES, AND REQUEST FOR APPOINTMENT OF AN EXAMINER

Debtors, Leon R. and Shirley M. Kearing, debtors in possession, pro se, hereby request that the Bankruptcy Court hold an expedited hearing on their application for removal of debtors' attorney, revocation of order awarding debtors' counsel interim compensation and expenses, and denial of subsequent compensation and expenses, and request for appointment of an examiner, and assigns the following reasons for this request:

1. Debtors employed attorney, Alfred Lawrence Toombs, on or about 21 November, 1986, for legal representation for debtors in a Chapter 13 proceeding only.

Debtors executed a written agreement for attorney to perform services at the rate of $2,500.00 cash retainer and $125.00 per hour thereafter, plus out of pocket expenses.

2. No other chapter proceedings agreement was signed.

3. Attorney filed Chapter 11 proceedings on 10 December, 1986, without written agreement or approval of debtors and without debtors being informed of the consequences of filing a petition under Chapter 7, 11, 12, or 13 of Title 11, U.S.C., and the relief available under each such chapter of Title 11 as required by Section 322 of Public Law 98-353, July 10, 1984, 98 Stat. 333.

4. Debtors never received copies of either the voluntary petition or the statement of affairs for a debtor not engaged in business.

5. Attorney, however, signed Exhibit "B" of the voluntary petition which is an unsworn declaration, under penalty of perjury, that debtors had been so informed of the relief available under each such chapter.

6. Debtors had availed themselves to legal counsel as their financial dilemma posed serious problems in need of counsel, but attorney informed debtors that they had no need to discuss the various chapters of bankruptcy as "that's what you pay me for," ~~a rather flippant, callous and high handed attitude toward distressed and concerned debtors~~.

7. Debtors' health, well-being and estate have been, and still may be, in

jeopardy and the debtors and their estate have lost valuable property and money due to ~~the lack of generally recognized conduct of professional ethics as evidenced by~~ attorney's action, to wit:

(a) Attorney has ~~aggressively badgered~~ debtors about the real property of the estate and the urgency and necessity, in his opinion, of disposing of the said real property and depositing any cash into an escrow account of which only the attorney is payee;

(b) Attorney has billed hours upon hours on unauthorized "~~wheeling and dealing~~" ~~with~~ real property of the estate and has, to date, settled one final sale of such real property -- and that at a $26,000.00 price <u>below</u> the appraised fair market value;

(c) With exception to debtors' earned wages, attorney has deposited all monies of the estate in two accounts of which he is payee and only one of which is interest bearing;

(d) Any settlements with claims or contracts have been ~~haphazard,~~ at loss to the estate of funds or potential funds;

(e) ~~Attorney has continually harassed and harangued both debtors, and children of debtors, both at home and work by telephone, mail, messenger and in person;~~

(f) ~~Attorneys [sic] work product does not justify any fees for any services rendered;~~

(g) Attorney has refused to release any funds from the escrow account for basic upkeep of the

estate, maintenance of property or emergency funds for debtors;

(h) Failure to release funds have caused debtor [sic] police arrest and ticketing of two illegal automobiles needed for debtor's use in conducting his affairs and work;

(i) ~~Debtors' tenants in all three apartments at 4444 Connecticut Avenue have been berated by attorney by telephone and mail;~~

(j) ~~Attorney coereed~~ debtors to pay $700-$750.00 every two weeks for approximately $6,700.00 in fees to attorney out of debtor's wages;

(k) Attorney demanded and received all stocks of debtors and all credit cards which remain in his possession;

(l) Attorney has repeatedly informed debtors that their real

property must be disposed of or that secured creditors will immediately, and without court authorization, auction said real property;

(m) ~~Attorney has debased debtors to others by impugning their sanity;~~

(n) Attorney has presented plans that are unworkable due to his enormous fees and total disregard of debtors' age and ability to generate income for next several years;

(o) And, attorney has continually and regularly submitted his fees for court approval ~~and has totally disregarded his fiduciary capacity to debtors and their creditors.~~

6. [sic] ~~Debtor [sic] believes that chicanery has been used by the attorney and~~

~~is-in-gross-violation-of-Rules-of Professional-Conduct-of-the-American-Bar Association-and-that-attorney-may-be-in danger-of-criminal-prosecution-under~~ 18, USC, §152, [sic] ~~which~~ states that

> Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantages, or promise thereof, for acting or forebearing to act in any case under Title 11; ... shall be punished by a fine of not more than $5,000, or imprisoned not more than five years, or both.

7. [sic] ~~Debtors-have-made-initial contact-with-the-grievance-committee-of-the federal-bar-and-intends-[sic]-to-pursue that-remedy,-as-well-as-the-D.C.-local-bar grievance-committee.~~

Debtors pray the court that debtors' counsel interim compensation and expenses be revoked and denial of subsequent compensation and expenses be made, and requests appointment of an examiner to:

(a) Pursue an investigation into

the deeds and action of attorney ~~and to proceed to find if, in fact, attorney has used fraud, dishonesty, incompetency, misconduct, mismanagement or irregularity in the management of the affairs of the debtors~~ pursuant to Title 11, U.S.C. § 1104(b).

/s/ Leon R. Kearing
Leon R. Kearing - Debtor In Possession

/s/ Shirley M. Kearing
Shirley M. Kearing - Debtor In Possession

MISSING FROM BANKRUPTCY COURT FILES

4801 Van Ness Street, N.W.
Washington, D.C. 20016
October 26, 1987

Mr. Alfred Lawrence Toombs, Esq.
Suite 820
1401 New York Avenue
Washington, D.C. 20005-2102

RE: LEON AND SHIRLEY KEARING
BANKRUPTCY CASE NO. 86-913

Dear Sir:

Because of your deliberate attempt to mislead us into believing you were our trustee appointed by the court and to willfully take advantage of our situation and naivete by charging excessive legal fees and depleting our estate bringing undue suffering and pain, you are relieved from further representation as of this date October 26, 1987.

Sincerely,
/s/ Leon R. Kearing, M.D.
LEON R. KEARING, M.D.
/s/ Shirley M. Kearing
SHIRLEY M. KEARING

cc. U.S. Trustee
U.S. Bankruptcy Court

FILED OCTOBER 6, 1987

TO:
U.S. BANKRUPTCY COURT CHAPTER 11
FROM: SHIRLEY AND LEON R. KEARING 86-913

SUBJECT: APPLICATION FEE OF LAWYER ALFRED LAWRENCE TOOMBS

We would like a hearing on the application fee of our lawyer Alfred Lawrence Toombs and to be able to handle our own selling of our residence 4801 Van Ness St., N.W., Washington, D.C. We have experience buying and selling real estate and can handle the complete transaction for ourselves, thus avoiding large legal fees



/s/ Leon R. Kearing, M.D.

/s/ Shirley Kearing

FILED OCTOBER 6, 1987

October 6, 1987

TO: ~~Judge Bason~~ US Trustee

FROM: Shirley and Leon Kearing

SUBJECT: CHAPTER 11 CASE NO. 86-913

It concerns us very much why our bankrupcy [sic] is causing us such pain and suffering. We are living without hot water and heat plus driving illegally with two cars in need of repair and not registered in the District of Columbia. We have never done anything against the law in our entire lives and now all that we do is illegal. Leon has been arrested and searched, handcuffed, and sent to a detention cell because of a non registered [sic] car.,[sic]

Shirley has been stopped by Police and removed from her car on the way to do an errand. Police had car towed away and gave

Shirley a ride to the bus stop.

LEON has been heating hot water in the morning to take a bath to go to work. He has been out of work for four days because of burns on leg and feet carrying boiling water upstairs.

Judge Bason, we are really hurting both physically and mentally while our attorney is getting rich because of our plight. We don't want to be in bankruptcy and even though we are selling our assets, our creditors still are not getting paid. The entire amount of our profit from Millwood Rd [sic] went for legal fees. Now we are selling our home with an estimated bill of $20,000 for legal fees bringing the total of $67,000 just in legal fees alone. Leon hasn't even earned that so far this year. Please help us get out of this bankruptcy AS SOON AS POSSIBLE.

Respectfully,

/s/ Leon R. Kearing, M.D.

/s/ Shirley Kearing

Our lawyer is aware of all of the above.

FILED JULY 17, 1987

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	Case No. 86-00913
Shirley M. Kearing	)	(Chapter 11)
Debtors	)	
	)	

PRAECIPE

Clerk:

Please withdraw without prejudice the Motion to Convert Case to Chapter 7 Proceeding or, in the alternative, to Appoint Trustee of Chevy Chase Savings Bank, F.S.B. filed in the above-captioned cause on April 15, 1987.

CHASEN & CHASEN

By: /s/ David N. Prensky
David N. Prensky

3301 New Mexico Avenue, N.W.
Washington, D.C. 20016
(202) 244-4000

Counsel for Chevy Chase Savings Bank, F.S.B.

FILED APRIL 15, 1987

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	Case No. 86-00913
Shirley M. Kearing	)	(Chapter 11)
Debtors	)	
	)	

MOTION TO CONVERT CASE TO CHAPTER 7 PROCEEDING OR, IN THE ALTERNATIVE, TO APPOINT TRUSTEE

CHEVY CHASE SAVINGS BANK, F.S.B. ("CHEVY CHASE"), by undersigned counsel, pursuant to 11 U.S.C., Section 1104 and 1112, moves that the above-captioned cause be converted to a proceeding under Chapter 7 of the Bankruptcy Code or, in the alternative, that a trustee be appointed to administer the debtors' estate, and in support therefor states as follows:

1. This cause was commenced by debtors on December 10, 1986, by the filing of a petition for relief under Chapter 11 of the Bankruptcy Code.

2. CHEVY CHASE is a secured creditor

of the debtors, holding a purchase money note secured by a first deed of trust against the real property described as Lot 20 in Square 1530, improved by the premises known as 4801 Van Ness Street, N.W., Washington, D.C. As of the date of filing of the debtors' petition for relief, the balance owing under the said note was in the sum of $261,900.70. At the time this action was commenced, debtors were in default under the terms of their note, the prepetition arrearages amounting to $14,493.24.

3. Debtors are in possession of the Van Ness property, but they have not made any payments to CHEVY CHASE under its note since the commencement of this action. The postpetition arrearages presently amount to $9,360.41.

4. More than 120 days have elapsed since the filing a [sic] debtors' petition

for relief, and the debtors have not filed a plan of reorganization. Such delay has been and will continue to be prejudicial to debtors' creditors in that the debtors are accruing additional debt while the value of their assets relative to such debt is diminishing. Movant believes that the debtors have demonstrated an inability to effect a plan of reorganization, and that the debtors are not competent to manage the affairs of their estate.

5. Movant further believes that conversion of this cause to a Chapter 7 proceeding would be in the best interests of the creditors and the estate by enabling the debtors' assets to be liquidated in a timely and orderly manner while there is still potential equity in the property. If, however, the Court is not willing to convert this case, then a trustee should be appointed so that an effective plan of

reorganization may be proposed or such other action as may be appropriate may be recommended to the Court.

WHEREFORE, movant requests that the Court convert this proceeding to a case under Chapter 7 of the Bankruptcy Code or, in the alternative, appoint a trustee pursuant to Section 1104 of the Code.

Respectfully submitted,

CHASEN & CHASEN

By: /s/ David N. Prensky
David N. Prensky

3301 New Mexico Avenue, N.W.
Washington, D.C. 20016
(202) 244-4000

Counsel for Chevy Chase Savings Bank, F.S.B.

POINTS AND AUTHORITIES

1. 11 U.S.C., Section 1104, 1112, and 1121.

2. Record of proceeding herein.

CHASEN & CHASEN

By: /s/ David N. Prensky
David N. Prensky

FILED DECEMBER 23, 1987

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re:	)	
Leon R. and	)	Case No. 86-00913
Shirley M. Kearing	)	(Chapter 11)
Debtors	)	
	)	

PRAECIPE

This January 20, 1987,

THE CLERK OF THE COURT WILL note that Debtors' address has been changed to:

4801 Van Ness St. NW
Washington, DC 20016

Respectfully submitted,

/s/ Alfred Lawrence Toombs

Alfred Lawrence Toombs
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